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9 Development Limited

10  
11 **UNITED STATES BANKRUPTCY COURT**  
12 **EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**

13 In Re  
14 TEMBLOR PETROLEUM  
15 COMPANY, LLC  
16  
17 Debtor-in-Possession.

CASE NO.: 2020-11367

Chapter 7

DMG-9

**OPPOSITION AND OBJECTIONS  
OF KINGS COUNTY  
DEVELOPMENT LIMITED TO  
MOTION TO SELL ESTATE'S  
INTEREST IN PROPERTY  
PURSUANT TO 11 U.S.C. SECTION  
363(b) (DEBTOR'S WORKING  
INTEREST IN WITTER FIELD  
AKA WEST FIVE POINTS);  
REQUEST FOR HEARING**

Date: September 14, 2022

Time: 1:30 p.m.

Place: United States Courthouse  
2500 Tulare St., 5th Fl.  
Fresno, CA

Judge: Hon. Jennifer E. Niemann

1 Creditor, Kings County Development Limited (“KCDL”), hereby submits  
2 pursuant to Rule 6004(b) of the Federal Rules of Bankruptcy Procedure, the  
3 following Opposition and Objections to the “Motion to Sell Estate’s Interest in  
4 Property Pursuant to 11 U.S.C. Section 363(b) (Debtor’s Working Interest in Witter  
5 Field aka West Five Points)” (“Motion to Sell Estate’s Interest in Property”), filed  
6 by Jeffrey Vetter, the Chapter 7 Trustee (“Trustee”) dated August 10, 2022.

7 KCDL further requests a hearing on the motion pursuant to Bankruptcy Rule  
8 6007(b).

9 **I.**

10 **INTRODUCTION**

11 At the June 29, 2022 hearing on the Trustee’s “Motion to Extend Deadline to  
12 Assume Executory Contracts and Lease”, the Trustee’s counsel informed the Court  
13 that the Trustee was prepared to ask the Court for authority to quitclaim the October  
14 3, 2005 oil and gas lease Temblor, as lessee, and KCDL as lessor. However, the  
15 Trustee took no further steps to do so. Despite his representation, the Trustee  
16 appears to be trying to sell that lease, something that the estate does not own since  
17 that lease terminated long before Temblor’s bankruptcy was filed. By definition, 11  
18 U.S.C. Section 363(b) does not authorize the Trustee to sell a property interest  
19 which is not included in the estate.

20 The Trustee’s motion to sell “... the real property commonly known as  
21 Debtor Temblor Petroleum Company, LLC’s Oil and Gas Working Interest, Witter  
22 Field”, assumes without any evidentiary support whatsoever, that the bankruptcy  
23 estate actually has a working interest in those oil, gas and mineral rights.

24 The Trustee previously identified Temblor’s working interest in the expired  
25 KCDL oil and gas lease as one of the leases which it sought to abandon. However,  
26 since that lease terminated by its own terms, the Trustee has no property interest  
27 which it could either sell or abandon.

28 KCDL has not consented to the transfer of the terminated lease to Petro Lud,

1 the nominal purchaser or to anyone else.

2 For that reason, KCDL, the owner of the oil, gas and mineral rights that were  
3 previously subject to the oil and gas lease with Temblor, opposes the Trustee's  
4 motion to the extent that the Trustee is trying to sell a non-existent working interest  
5 in a lease covering KCDL's property.

6 Instead, the Trustee needs to keep his promise and quitclaim the lease back to  
7 KCDL. KCDL has been waiting for years to receive a quitclaim of the KCDL Lease  
8 which expired prior to this bankruptcy. The lack of a quitclaim has created a cloud  
9 on its title to KCDL's mineral rights and, as a result, is impairing its ability to lease  
10 the property to another operator and, potentially to sell the property. While KCDL  
11 understands that the Trustee does not want the KCDL Lease, the most appropriate  
12 course of action would be for the Trustee to perform its obligation under that lease  
13 and deliver a quitclaim to KCDL

## 14 II.

### 15 FACTUAL BACKGROUND

#### 16 A. The KCDL Lease Is Not An Asset of the Debtor's Estate.

17 The Trustee's Motion states that:

18 ““Chapter 7 Trustee Jeffrey M. Vetter (“Trustee”) moves this court for an  
19 order authorizing the sale of the real property commonly known as Debtor  
20 Temblor Petroleum Company LLC's Oil and Gas Working Interest, Witter  
21 Field, aka West Five Points pursuant to 11 U.S.C. § 363(b)... .””

22 The Trustee's Motion fails to identify any specific property or oil and gas lease in  
23 the Witter Field. The Trustee's Motion appears to be intended to include the oil and  
24 gas leases which had been claimed by the Temblor to be located in the Witter Field.  
25 One of those leases was the oil and gas lease between Temblor, as lessee, and  
26 KCDL as lessor, dated October 3, 2005 (“KCDL Lease”), and which affected a  
27 portion of the Northwest quarter (NW/4) of Section 21, Township 17 South, Range  
28 17 East, M.D.B.&M. in Fresno County (the “Leased Land”). (*Declaration of*

1 *Douglas Donath*. ¶ 3, Exhibit “A” [hereinafter, “*Donath Decl.* ¶ \_\_\_\_”]) The KCDL  
2 Lease ultimately was amended seven times to extend the primary term ultimately to  
3 October 5, 2018<sup>1</sup>. (*Donath Decl.* ¶ 3 and 6)

4 As with nearly every oil and gas lease in California, the KCDL Lease could  
5 only remain in effect after the primary term expired “for so long thereafter as oil,  
6 gas, hydrocarbons or other hydrocarbon substances are produced therefrom in  
7 paying quantities.” (*Donath Decl.* ¶ 7-10)

8 In 2018, Temblor drilled its “Harnsich-McCormick No. 5” well (“HM #5  
9 Well”) to a bottom hole location on the Leased Land. However, the well failed to  
10 produce oil or gas in paying quantities. (*Donath Decl.* ¶11) Since Temblor’s  
11 completion of the HM #5 Well, no new drilling operations were commenced by  
12 Temblor on the Leased Land within six months following the completion of that  
13 well. (*Donath Decl.* ¶12)

14 Since oil and gas has not been produced in paying quantities from the HM #5  
15 Well, and the well is not currently being produced in paying quantities, and Temblor  
16 failed to commence drilling operations to drill a subsequent well, the KCDL Lease  
17 terminated for lack of production of oil and gas in paying quantities well before  
18 Temblor filed its bankruptcy petition on April 9, 2020. (*Donath Decl.* ¶12-15)

19 California Civil Code Section 883.140(b) required Temblor to “...within 30  
20 days after demand therefor by the lessor, execute, acknowledge, and deliver, or  
21 cause to be recorded, a deed quitclaiming all interest in and to the mineral rights  
22 covered by the lease.”

23 Accordingly, on August 7, 2019, KCDL demanded, pursuant to Section 33 of  
24 the KCDL Lease, that Temblor immediately execute, acknowledge and deliver to  
25

26 1 Each of the lease amendments is attached to KCDL’s Amended Proof of  
27 Claim filed with this court August 10, 2021, as well as KCDL’s original proof of  
28 claim dated and filed with this court on September 8, 2020 as Claim No. 27.

1 KCDL a quitclaim deed in recordable form surrendering all of the lessee's interest  
2 under the KCDL Lease. (*Donath Decl.* ¶16, Exhibit "C".)

3 Temblor refused to execute, acknowledge and deliver to KCDL a quitclaim  
4 deed surrendering all of the lessee's interest under the KCDL Lease. (*Donath Decl.*  
5 ¶17).

6 KCDL has now been waiting for *more than three years* for its title to be  
7 cleared through a quitclaim from Temblor or the Trustee, so that it can lease or sell  
8 the property to one or more other oil companies who actually have the financial and  
9 operational capability to drill for and produce oil and gas- a capability that neither  
10 Temblor nor the Trustee simply does not have. The lack of a quitclaim of the  
11 KCDL Lease with Temblor has been identified in KCDL's discussions with  
12 prospective buyers, lessees and operators as being a fundamental obstacle to moving  
13 forward with any contractual or other arrangement. (*Donath Decl.* ¶18)

14 Since the Trustee obviously has no intention to resume production, the  
15 Trustee and the estate have no recognizable legitimate interest in continuing to cloud  
16 KCDL's title to the Leased Land by refusing to quitclaim the KCDL Lease. Once  
17 this case was converted to a Chapter 7 proceeding, KCDL through its attorney of  
18 record, John J. Harris, asked the Trustee to quitclaim the lease. That request was  
19 most recently documented in the letter dated May 16, 2022 to Max Gardner, the  
20 Trustee's attorney of record. (*Donath Decl.* ¶21; See, Mr. Harris' May 16, 2022  
21 letter is attached to the Donath Decl. as "Exhibit D".)

22 If the Trustee does not deliver a quitclaim, KCDL could be forced to file a  
23 motion for relief from the automatic stay in order to file and prosecute a quiet title  
24 action to clear its title to the Leased Land. The Trustee would be compelled to  
25 unnecessarily incur attorney's fees and other costs in defending such an action, as to  
26 which it would have no legal or factual basis to oppose. At this point, it is unclear  
27 that the Trustee even has funds that could be utilized to defend such a lawsuit.  
28 (*Donath Decl.* ¶22)

1 Accordingly, to spare the Trustee from incurring any further unnecessary  
2 expenses, and since the Trustee clearly has no interest in retaining the KCDL Lease,  
3 KCDL believes that the Court should authorize the Trustee to deliver to KCDL a  
4 quitclaim of the KCDL Lease. (*Donath Decl.* ¶22-23)

5 Furthermore, Paragraph 40 of the KCDL Lease provides:

6 “ Any assignments or transfers of this oil and gas lease may only be assigned  
7 upon advance written consent of the lessor, which consent shall not be  
8 unreasonably withheld. “

9 Even assuming for the sake of argument that the Trustee had the ability to sell  
10 a terminated oil and gas lease, KCDL has not been asked to consent and has not  
11 consented to the transfer of the KCDL Lease to any third party nor has the Trustee  
12 proposed to cure the outstanding breaches of the lease. (*Donath Decl.* ¶25) The  
13 Trustee’s Motion does not address his failure to obtain KCDL’s consent to transfer  
14 or the uncured breaches or otherwise propose any protections for KCDL.

15 Necessarily, since the KCDL Lease has terminated, KCDL will not consent to  
16 any assignment considering Temblor’s many uncured breaches of the KCDL Lease  
17 before it terminated, as set forth in KCDL’s Amended Proof of Claim dated August  
18 10, 2021 (*Donath Decl.* ¶25 and Exhibit “E” thereto.).

### 20 III.

#### 21 DISCUSSION

#### 22 A. Since the KCDL Lease Is Not An Asset of the Estate, the Trustee 23 Cannot Sell the Lease and the Trustee Should Be Directed Authorized 24 to Deliver A Quitclaim of the Lease to KCDL.

25 Section 363 does not allow and the Trustee cannot sell property which is not  
26 part of the estate. It is an "elemental rule" of bankruptcy law that a trustee or debtor  
27 in possession acquires no greater right or title to property than the debtor and takes  
28 the property subject to the same conditions and burdens as the debtor. (*In re Raborn,*

1 470 F. 3d 1319, 1323 (11th Cir. 2006). The scope of the bankruptcy "estate" is  
2 defined by Section 541 of the Bankruptcy Code. 11 U.S.C. §541. Section 541 cannot  
3 create a right or title in the debtor that does not exist under state law.

4 Property interests are created and defined by state law absent a countervailing  
5 federal interest. (See, *Delaware v. New York*, 507 U.S. 490, 501-02, 113 S. Ct. 1550,  
6 1557, 123 L. Ed. 2d 211(1993); *Butner v. United States*, 440 U.S. 48, 55, 99 S. Ct.  
7 914, 918, 59 L. ed. 2d 136 (1979); *In re Thorpe*, 546 B.R. 172, 176 (Bankr. C.D.  
8 Ill.2016); *In re Segerstrom*, 247 F. 3d 218, 223 (5th Cir. 2001) ("*Butner* espouses  
9 the principle that property rights within a state should remain the same within and  
10 outside of bankruptcy"). Property rights existing before bankruptcy in persons other  
11 than the bankrupt must be recognized and respected in bankruptcy.

12  
13 **B. Terminated Oil and Gas Leases Are Not Assets of the Estate.**

14 11 U.S.C.A. § 541(b)(2) provides that the “ Property of the estate does not  
15 include--

16 “any interest of the debtor as a lessee under a lease of nonresidential real  
17 property that has terminated at the expiration of the stated term of such lease  
18 before the commencement of the case under this title, and ceases to include  
19 any interest of the debtor as a lessee under a lease of nonresidential real  
20 property that has terminated at the expiration of the stated term of such lease  
21 during the case; ....”

22 An oil and gas lease which has terminated by its own terms either prior to the  
23 bankruptcy, or during the pendency of a bankruptcy is ***not*** the property of the estate.  
24 (*In re Riverwood Gas & Oil, LLC*, 601 B.R. 685, 690 (Bankr. C.D. Cal. 2019)

25 Under applicable California law, the KCDL Lease expired by its own terms  
26 for lack of production in paying quantities. As the Court held in *Montana-Fresno*  
27 *Oil Company v. Powell*, 219 Cal.App.2d 653, 659 (1963): “***An operating oil lease is***  
28 ***both a conveyance and a contract*** designed to fit the needs of the owner of the land



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1 and the operator of the oil properties in making them productive. As such, it  
2 contains traditional conveyancing portions and particularly phrased contractual  
3 portions.” (Emphasis added.) Following a long line of California authority, the  
4 Court in *Montana-Fresno* ultimately held at 219 Cal.App.2d 665-667 that the lease,  
5 the “fee simple determinable interest”, automatically terminated upon the  
6 occurrence of the stated condition, the lack of production in “paying quantities” and  
7 that the complete cessation of production ended the term of the lease. (See, also,  
8 *Lough v. Coal Oil, Inc.*, 217 Cal.App.3d 1518, 1528-1529 (1990); *San Mateo*  
9 *Community College Dist. v. Half Moon Bay, L.P.*, 65 Cal.App.4th, 401, 410 (1998);  
10 *Renner v. Huntington Hawthorne Oil and Gas Co.*, 39 Cal.2d 93, 98-99 (1952).)

11 Because the termination of a mineral lease for lack of production is self-  
12 operative under California law, termination is not prevented by the automatic stay  
13 arising from the filing of the bankruptcy petition. (*In re Trigg*, 630 F. 2d 1370, 1373  
14 (10th Cir. 1980) [self-operative termination of mineral lease not barred by automatic  
15 stay]; *Good Hope Refineries, Inc. v. Benavides*, 602 F. 2d 998 (1st Cir. 1979) [Texas  
16 mineral lease terminated automatically for failure to tender delay rentals, without  
17 regard to bankruptcy]).

18 Among the oil and gas leases which the Temblor had previously and  
19 inaccurately identified as an asset in the Witter Field was the KCDL Lease. As set  
20 forth in the Declaration of Douglas Donath filed in support of this Opposition  
21 demonstrates, Temblor *never* produced oil and gas in paying quantities and the  
22 KCDL Lease terminated for lack of production of oil and gas in paying quantities.  
23 (*Donath Decl.* ¶7-14.) As a result, the estate no longer has a working interest in the  
24 KCDL Lease and that interest could not be considered an asset of the estate.

25 Although the Trustee certainly is aware of KCDL’s position regarding the  
26 termination of the KVCDL Lease, and effectively conceded the point buy its  
27 motion to abandon, its Motion here fails to even address how the Trustee can  
28 possibly sell an asset in which it has no interest whatsoever.



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1 All that remains of the KCDL Lease is the obligation to surrender the lease  
2 back to KCDL. The execution of a quitclaim deed surrendering the KCDL Lease  
3 does not necessarily import that the quitclaiming party possesses any interest at all.  
4 (*In re Atlantic Gulf Communities Corp.*, 326 B.R. 294, 300 (Bankr. D. Del. 2005).)  
5 A quitclaim is a release of whatever present title or interest the party executing the  
6 quitclaim has in the property quitclaimed, and when made by the owner of a  
7 dominant tenement, such as an oil and gas lease, to the owner of the servient  
8 tenement operates as a release and extinguishment. (*Westlake v. Silva*, 49 Cal. App.  
9 2d 476, 478 (1942).) Customarily, the release is in the form of a quitclaim deed by  
10 the owner of the easement to the owner of the servient tenement. (6 *Miller & Starr*,  
11 Cal. Real Est. § 15:74 (4th ed.).) Accordingly, the Trustee would not be selling or  
12 transferring any interest to KCDL, but rather would simply acknowledging the  
13 termination of the KCDL Lease and the surrendering and releasing any lessee's  
14 interest by operation of law, thereby extinguishing the lease.

15 Considering that the Trustee cannot sell any working interest in the KCDL  
16 Lease and does not want to retain any interest in the KCDL Lease, the most  
17 appropriate course of action would be for the Trustee to surrender the lease through  
18 the execution of a quitclaim in recordable form, as the Trustee previously  
19 represented to the court he was prepared to do.. To the extent an order of the court is  
20 necessary, KCDL is prepared to stipulate to an order authorizing the Trustee to  
21 execute such a quitclaim.

22  
23 **C. The Trustee Does Not Have the Ability Under Section 363(d) To Sell**  
24 **the Terminated KCDL Lease Without KCDL's Consent and Without**  
25 **Any Consideration or Protection of KCDL's Interests.**

26 A bankruptcy court does not have ability to revive a lease which expired  
27 before the bankruptcy was filed. *In re Moore*, 290 B.R. 851, 871 and 909 (Bankr.  
28 N.D. Ala. 2003) As the Court held in *In re Gulf Coast Oil Corp.*, 404 B.R. 407,

1 422(Bankr. S.D. Tex. 2009), a trustee must consider its fiduciary duties to all  
2 creditors and interest holders before seeking approval of a transaction under §  
3 363(b).

4 Here, the Trustee is asking this court to place its stamp of approval on a  
5 fraudulent effort to sell an oil and gas lease that indisputably terminated prior to the  
6 filing of Temblor's bankruptcy without any regard to the rights KCDL as both a  
7 lessor and creditor and without KCDL's consent. The Motion cites absolutely no  
8 case or statutory authority which would permit a Chapter 7 Trustee to do so.

9  
10 **CONCLUSION**

11 For the foregoing reasons, Creditor, Kings County Development Limited,  
12 requests that this Court enter an order sustaining its objections and denying the  
13 approval of the sale of the KCDL Lease.

14 Instead, the Court can and should direct and authorize the Trustee to execute a  
15 quitclaim of the KCDL Lease in recordable form so that KCDL can finally clear title  
16 to is property.

17 KCDL consents to the Court's resolution of disputed material factual issues  
18 (Fed. R. Civ. P. 43(c), Fed. R. Bankr. P. 9017 and Local Rule 9014-1(f)(1)(B).)

19  
20 Dated: August 30, 2022

CASSO & SPARKS, LLP

21  
22 By: /s/ John J. Harris  
23 John J. Harris  
24 Attorneys for  
Kings County Development Limited

25 4867-2839-3262, v. 2  
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28